parties contend that the term "own telephone exchange service facilities" means only those facilities that are independent of the BOC, and not unbundled network elements that are *leased* from the BOC.[212]

90. The Department of Justice argues that the Commission need not decide whether the use of unbundled network elements constitutes facilities-based service.[213] The Department of Justice contends that, because Brooks Fiber, which serves both residential and business customers, does not serve any local customers through resale and provides significant switching and transport facilities, "it is reasonable to conclude that Brooks [Fiber] is predominantly a facilities-based provider," thereby meeting the requirements of section 271(c)(1)(A).[214]

91. Despite the Department of Justice's argument that we need not determine whether unbundled network elements are treated as a competing carrier's "own telephone exchange service facilities" for purposes of this application, we think it is useful to decide the issue in this Order to provide guidance to future applicants. We note that the determination of whether competing providers are offering telephone exchange service exclusively or predominantly "over their own telephone exchange service facilities" will in many instances depend on the construction of the phrase "own telephone exchange service facilities." Indeed, in this application, as discussed below, the determination of whether Brooks Fiber offers telephone exchange services "exclusively over [its] own telephone exchange service facilities" turns on whether the phrase "own telephone exchange service facilities" in section 271(c)(1)(A) includes unbundled network elements.[215]

92. To determine whether "own telephone exchange service facilities" includes unbundled network elements, we look first to the text of the statute. We agree with Ameritech that section 271(c)(1)(A) recognizes only two methods of providing service: through a carrier's own telephone exchange service facilities and through resale. Undoubtedly, facilities that a carrier constructs would be that carrier's own telephone exchange service facilities, and service provided through resale of Ameritech's

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[212] *See, e.g.*, ALTS Comments at 24; Sprint Comments at 10-12.

[213] Department of Justice Evaluation at 7 n.11; *see also* Ameritech Reply Comments at 3 n.5 (agreeing with the Department of Justice that the Commission need not reach this issue to determine that the requirements of section 271(c)(1)(A) are satisfied).

[214] Department of Justice Evaluation at 7. As noted above, the Department of Justice does not address this issue with respect to MFS WorldCom and TCG, because it takes the position that a carrier must provide service to both business and residential customers, and those carriers are not serving residential customers. The Department of Justice therefore maintains that "MFS [WorldCom] and TCG cannot be considered facilities-based providers that can be used to satisfy Track A of Section 271." *Id.*

[215] *See infra* para. 102.

telecommunications services pursuant to section 251(c)(4) would be resale. Section 271(c)(1)(A) does not discuss a third category for provision of service through unbundled network elements. The question, then, is whether service using unbundled network elements purchased from Ameritech counts as service over a competing provider's own telephone exchange service facilities or resale.

93. Neither the statute nor the legislative history expressly defines "own telephone exchange service facilities." Thus, it is not clear from the text of the statute whether the phrase "own telephone exchange service facilities" includes only those facilities to which a competing carrier has legal title or which a competing carrier leases from a provider not affiliated with a BOC, or, alternately, also includes unbundled network elements obtained from a BOC, because the competing carrier has the "use of that facility for a period of time."[216] As we stated in the *Universal Service Order*, "the word 'own' . . . is a 'generic term' that 'varies in its significance according to its use' and 'designate[s] a great variety of interests in property.'"[217] We further noted in the *Universal Service Order*, that the use of the term "own facilities," rather than facilities "owned by" a carrier, suggests that the term "own facilities" could refer "to property that a carrier considers its own, such as unbundled network elements, but to which the carrier does not hold absolute title."[218] Thus, the phrase "own telephone exchange service facilities" in section 271(c)(1)(A) is ambiguous with respect to whether it includes unbundled network elements.

94. Because the meaning of the phrase "own telephone exchange service facilities" is unclear from the text of section 271(c)(1)(A), we look to other sections of the Act, the legislative history, and the underlying policy objectives to resolve the ambiguity. In light of the specific context in which this language is used, the broader statutory scheme, and Congress' policy objectives, we conclude that the only logical statutory interpretation is that unbundled network elements purchased from a BOC are a competing provider's "own telephone exchange service facilities."

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[216] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15635 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.*, 1997 WL 403401 (8th Cir., July 18, 1997) (*Iowa Utils. Bd.*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996) (*Local Competition First Reconsideration Order*), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996) (*Local Competition Second Reconsideration Order*), *Third Order on Reconsideration and Further Proposed Rulemaking*, FCC 97-295 (rel. Aug. 18, 1997) (*Local Competition Third Reconsideration Order*), *further recon. pending*; 47 C.F.R. § 51.309.

[217] *Universal Service Order* at para. 158 (citing Black's Law Dictionary 1105 (6th Ed. 1990), and 73 C.J.S. Property § 24 (1972)).

[218] *Universal Service Order* at para. 159.

95. Specifically, section 271(c)(1)(A) refers to "resale of *the telecommunications services* of another carrier," and not resale of the *facilities* of another carrier. As we determined in the *Universal Service Order*, the provision of an unbundled network element is not the provision of a telecommunications service.[219] A "network element" is defined in the Act as a "facility or equipment used in the provision of a telecommunications service."[220] Thus, use of unbundled network elements is not resale of the telecommunications services of another carrier.

96. Furthermore, section 251 clearly distinguishes between resale and access to unbundled network elements. The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The term "resale" in section 251 refers to an incumbent local exchange carrier's duty to offer at wholesale rates "any telecommunications service that the carrier provides at retail."[221] As we recognized in the *Universal Service Order*, section 251 imposes an obligation on incumbent LECs to offer retail services at wholesale rates for resale, and in a different subsection, imposes an independent obligation on incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis."[222] Given that the term "resale" is defined and distinguished from the provision of unbundled network elements in section 251, Congress' use of the term "resale" in section 271(c)(1)(A) suggests that Congress did not intend that term to encompass unbundled network elements. Rather, it appears that telephone exchange service provided through unbundled network elements is service over the competing provider's "own telephone exchange service facilities."

97. We are not persuaded by the argument that the requirement in section 271(c)(1)(A) that a BOC "is providing access . . . to its network facilities" means that unbundled network elements must be considered the facilities of the BOC, not the competitor. This phrase does not clarify the meaning of the words "own telephone exchange service facilities" used later in the section. The requirement that a BOC provide access to its network facilities does not indicate whether or not those facilities should be deemed the BOC's facilities or the competing provider's facilities, once the competing provider has obtained them.

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[219] *Id.* at para. 157; *see also Iowa Utils. Bd*, 1997 WL 403401, at *19-20 (upholding the Commission's determination that "the term 'network element' includes all of the facilities and equipment that are used in the overall commercial offering of telecommunications [services]").

[220] 47 U.S.C. § 153(29). The definition of "telecommunications service" also makes clear the distinction between "service" and "facilities": a "telecommunications service" is defined as "the offering of telecommunications for a fee . . . regardless of the facilities used." *Id.* § 153(46).

[221] *Id.* § 251(c)(4)(A).

[222] *Universal Service Order* at para. 157; *see also* 47 U.S.C. § 251(c)(3)-(4).

98. We are also not persuaded by the argument, advanced by several parties,[223] that the following statement in the Joint Explanatory Statement supports the interpretation that the provision of service through unbundled network elements should be considered resale:

> This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. Some facilities and capabilities (*e.g.*, central office switching) will need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251. Nonetheless, the conference agreement includes the "predominantly over their own telephone exchange service facilities" requirement to ensure a competitor offering service exclusively through the resale of the BOC's telephone exchange service does not qualify, and that an unaffiliated competing provider is present in the market.[224]

Although this statement makes clear that a new entrant offering service exclusively through *resale of the BOC's telephone exchange service* does not satisfy section 271(c)(1)(A), the quoted passage does not address whether unbundled network elements constitute a competing carrier's "own telephone exchange service facilities." As discussed above, use of unbundled network elements is not resale of the BOC's telephone exchange service.[225] Thus, the statement does not clarify whether "own telephone exchange service facilities" includes unbundled network elements.[226]

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[223] *See* MFS WorldCom Reply Comments at 5; NCTA Reply Comments at 5; Sprint Comments at 6; Time Warner Comments at 19-20; TRA Comments at 14; TRA Reply Comments at 11.

[224] Joint Explanatory Statement at 148.

[225] Other statements in the legislative history further demonstrate that use of unbundled elements does not constitute resale. The House Commerce Committee Report, in discussing the precursor to section 271(c)(1)(A), states that "resale, as described in section 242(a)(3), would not qualify [as a facilities-based competitor] because resellers would not have their own facilities in the local exchange over which they would provide service." House Report at 77. In turn, section 242(a) of the House bill, which imposed interconnection and access obligations, distinguished between resale (section 242(a)(3)) and the provision of unbundled network elements (section 242(a)(2)) in much the same manner as the statutory language ultimately enacted as section 251 of the Act. *Id.* at 3.

[226] Time Warner also points to a floor statement that it claims supports its view that unbundled network elements obtained from a BOC are resold facilities, while unbundled network elements obtained from another carrier and facilities constructed by the competing provider would be the competing provider's "own telephone exchange service facilities." *See* Time Warner Comments at 20-21; *see also* 141 Cong. Rec. H8458 (daily ed. Aug. 4, 1995); 141 Cong. Rec. E1699 (daily ed. Aug. 11, 1995). We note that this reading of the statute appears inconsistent with the statutory scheme, because: (1) the statute is written in terms of the resale of telecommunications services, not facilities; and (2) the statute does not differentiate between unbundled network elements purchased from the BOC and those elements purchased from a third party. Thus, we conclude that

99. Furthermore, as a matter of policy, we believe that interpreting "own telephone exchange service facilities" to include unbundled network elements will further Congress' objective of opening the local exchange and exchange access markets to competition.[227] Congress sought to ensure that new entrants would be able to take advantage of any, or all three, of the entry strategies which the Act established.[228] Interpreting the phrase "own telephone exchange service facilities" to include unbundled network elements will provide the BOCs a greater incentive to cooperate with competing providers in the provision of unbundled network elements, because they will be able to obtain in-region interLATA authority under Track A regardless of whether competing carriers construct new facilities or provide service using unbundled network elements.[229] Thus, on balance, we find that this statutory interpretation will better promote Congress' objectives.[230]

100. We reject the argument raised by several parties that, because competing providers can offer unique services and provide consumers with genuine competitive choices only when they build facilities, policy considerations support the conclusion that "own telephone exchange service facilities" do not include unbundled network elements. A new entrant using solely unbundled network elements has the incentive and ability to package and market services in ways that differ from the BOC's existing service offerings in order to

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statements of an individual member of Congress do not overcome the other evidence discussed in this section that indicates Congress' intention to treat unbundled network elements as a competing carrier's "own telephone exchange service facilities." *See Bath Iron Works Corp. v. Office of Workers Compensation Programs*, 506 U.S. 153, 166 (1993); *Pappas v. Buck Consultants, Inc.*, 923 F.2d 531, 536-37 (7th Cir. 1991); *see also supra* note 73.

[227] *See* Joint Explanatory Statement at 1, 113.

[228] Joint Explanatory Statement at 1; *see also Iowa Utils. Bd.*, 1997 WL 403401, at *28 (concluding that "Congress clearly included measures in the Act, such as the interconnection, unbundled access, and resale provisions, in order to expedite the introduction of pervasive competition into the local telecommunications industry).

[229] A contrary reading of "own telephone exchange service facilities" could lead the BOCs to discourage the use of unbundled network elements by new entrants, because a BOC could only obtain in-region interLATA authority if new entrants actually construct facilities.

[230] Interpreting "own telephone exchange service facilities" to include unbundled network elements will also promote Congress' objective that BOCs obtain approval to enter their in-region interLATA markets primarily by satisfying section 271(c)(1)(A), rather than section 271(c)(1)(B). *See SBC Oklahoma Order* at paras. 41-42 ("[C]onsistent with its goal of developing competition, Congress intended Track A to be the primary vehicle for BOC entry in section 271."). If unbundled network elements are treated as a competing carrier's "own telephone exchange service facilities," it is more likely that a BOC will receive a request for access and interconnection from a competing carrier that, if implemented, would satisfy section 271(c)(1)(A), thereby barring the BOC from proceeding under section 271(c)(1)(B). *See id.* at para. 27. As a result, this interpretation of "own telephone exchange service facilities" would make it more likely that a BOC seeking in-region interLATA entry would be able to proceed under section 271(c)(1)(A).

compete in the local telecommunications market. In contrast, carriers reselling an incumbent LEC's services are limited to offering the same services that the incumbent offers at retail.[231] As a result, many of the benefits that consumers would realize if competing providers build facilities can also be realized through the use of unbundled network elements. Moreover, competing providers may combine unbundled network elements with facilities they construct to provide a wide array of competitive choices.

101. Thus, for the foregoing reasons, we interpret the phrase "own telephone exchange service facilities," in section 271(c)(1)(A), to include unbundled network elements that a competing provider has obtained from a BOC. Although we define this term in the same manner as we defined "own facilities" in section 214(e) in the *Universal Service Order*, we base our decision here on the text of section 271(c)(1)(A), the legislative history of this provision, and the overall statutory scheme of the 1996 Act. Thus, the issue, raised by several parties, of whether we may interpret "own telephone exchange service facilities" in section 271(c)(1)(A) in a different manner than we interpreted "own facilities" in section 214(e) is moot, and therefore, we need not decide this issue.

102. Having determined that unbundled network elements are a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A), we find that Brooks Fiber is offering service "exclusively over [its] own telephone exchange service facilities." Brooks Fiber is not offering service through resale of the telecommunications services of another carrier, but instead, currently serves both business and residential customers through either: (1) fiber optic rings, which are connected to its switches; or (2) unbundled loops obtained from Ameritech, which are connected to Brooks Fiber's switches.[232]

103. Because we find that Brooks Fiber is offering service "exclusively over [its] own telephone exchange service facilities," we need not determine whether MFS WorldCom and TCG are also offering service "exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."[233] Accordingly, we

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[231] *See* 47 U.S.C. § 251(c)(4).

[232] *See supra* para. 65.

[233] TCG serves business customers in the Detroit metropolitan area through either: (1) its switch and fiber optic network; or (2) dedicated DS1 and DS3 lines purchased from Ameritech, which are connected to TCG's switch in the Detroit area. Ameritech Application, Vol. 2.3, Edwards Aff. at 6; TCG Comments at 25-26. Ameritech maintains that TCG "offer[s] local exchange service exclusively or predominantly over [its] own telephone exchange service facilities," because TCG is not serving any local customers through resale. Ameritech Application at 10-11. No party disputes this claim on the ground that TCG purchases some DS1 and DS3 lines out of Ameritech's access tariff. We need not reach this issue, however, because, as discussed above, Ameritech would satisfy section 271(c)(1)(A) in any event through its interconnection agreement with Brooks Fiber.

need not reach the issue, raised by certain parties, of the meaning of the term "predominantly" as used in section 271(c)(1)(A).

5. Summary and Conclusion

104. We find, for the reasons discussed above, that Ameritech has entered into binding agreements with Brooks Fiber, MFS WorldCom, and TCG that have been approved under section 252 and that specify the terms and conditions under which Ameritech is providing access and interconnection to its network facilities for the network facilities of these three competing providers of telephone exchange service to residential and business subscribers. In addition, we determine that Brooks Fiber is offering such telephone exchange service exclusively over its own telephone exchange service facilities. Thus, we conclude that Ameritech has satisfied the requirements of section 271(c)(1)(A) through its interconnection agreement with Brooks Fiber. Because Ameritech has satisfied section 271(c)(1)(A) through its agreement with Brooks Fiber, we need not determine whether Ameritech has also satisfied this provision through its agreements with MFS WorldCom and TCG.

VI. CHECKLIST COMPLIANCE

105. Because we have concluded that Ameritech satisfies section 271(c)(1)(A), we must next determine whether Ameritech has "fully implemented the competitive checklist in subsection (c)(2)(B)."[234] For the reasons set forth below, we conclude that Ameritech has not yet demonstrated by a preponderance of the evidence that it has fully implemented the competitive checklist. In particular, we find that Ameritech has not met its burden of showing that it is providing access to operations support systems functions, interconnection, and access to 911 and E911 services, in accordance with the requirements of section 271(c)(2)(B). Like the Department of Justice, which observed that "Ameritech has made significant and important progress toward meeting the preconditions for in-region interLATA entry under [s]ection 271 in Michigan, and has satisfied many of those preconditions,"[235] we do recognize, however, Ameritech's considerable efforts to implement the 1996 Act's goal of opening local markets to competition.

106. Given our finding that Ameritech has not demonstrated that it has fully implemented the competitive checklist, we need not decide in this Order whether Ameritech is providing each and every checklist item at rates and on terms and conditions that comply with the Act. Accordingly, we include here a complete discussion of only certain checklist items -- access to operations support systems functions, interconnection, and access to 911 and E911

[234] 47 U.S.C. § 271(d)(3)(A)(i).

[235] We note that the Department of Justice only evaluated Ameritech's showing with respect to the provision of unbundled switching, unbundled transport, interconnection, and operations support systems.

services. Nonetheless, in order to provide further guidance with respect to Ameritech's checklist compliance, we briefly summarize in Section B Ameritech's showing on several checklist items for which there is very little comment, and highlight below, in Section F, our concerns regarding certain other checklist items.[236] We note that we make no findings or conclusions with respect to those checklist items addressed in Sections B and F.

A. Implementation of the Checklist

1. Introduction

107. Before turning to an examination of Ameritech's showing on specific checklist items, we first must address what it means to "provide" checklist items. We conclude that a BOC provides a checklist item if it makes that item available as a legal and practical matter, as described below.

2. Discussion

108. As noted above, to satisfy the requirement of section 271(d)(3)(A)(i), Ameritech must demonstrate that it has fully implemented the competitive checklist by providing access and interconnection as described therein.[237] Accordingly, we must consider whether Ameritech "is providing" access and interconnection pursuant to the terms of the checklist.[238]

109. The parties advocate divergent views regarding what it means to "provide" a checklist item. Ameritech cites dictionary definitions of "provide" to argue that the term may mean "make available" or "furnish."[239] Ameritech and Bell Atlantic contend that a BOC "provides" a given checklist item either by actually furnishing the item to carriers that have ordered it or by making the item available, through an approved interconnection agreement, to carriers that may elect to order it in the future.[240] The interexchange carriers and competing LECs participating in this proceeding generally construe "provide" to mean "actually furnish,"

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[236] Issues discussed below include: pricing of checklist items, unbundled local transport, unbundled local switching, combinations of unbundled network elements, number portability, reciprocal compensation.

[237] *See* MCI Comments at 11-12 (citing *Webster's Seventh New College Dictionary* for the definition of "implement" -- "to give practical effect to and ensure of actual fulfillment by concrete measure").

[238] *Accord* LCI Comments at 1.

[239] Ameritech Application at 19.

[240] *Id.*; Bell Atlantic Comments at 5-6; *see also* BellSouth/SBC Comments at 5-7.

not merely "offer" or "make available."[241] The Department of Justice concludes, however, that, "[i]n a situation where a BOC is not furnishing a checklist item due to the absence of current orders, it can still 'provide' that item by making it available both as a legal matter (i.e., contractually through complete terms in binding approved interconnection agreements that comply with all applicable legal requirements) as well as a practical matter (i.e., it must stand ready to fulfill a competitor's request on demand)."[242] Several parties endorse the statutory analysis of the Department of Justice.[243]

110. We agree with Ameritech that "provide" is commonly understood to mean both "furnish" and "make available."[244] Therefore, we must look to the statutory context in which the term is used to determine its precise meaning in this instance. For the reasons discussed below, we conclude that a BOC "provides" a checklist item if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter.[245] Like the Department of Justice, we emphasize that the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance.[246] To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.[247] Moreover, the petitioning BOC must demonstrate that it

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[241] *See, e.g.*, CompTel Comments at 11-12; LCI Comments at 1-2; MCI Comments at 12-13; NCTA Reply Comments at 14; Sprint Comments at 4; TCG Comments at 19; TRA Comments at 26; MFS WorldCom Comments at 9.

[242] Department of Justice Evaluation at 11; *see also* Department of Justice SBC Oklahoma Evaluation at 23-24 ("a BOC is 'providing' a checklist item only if it has a concrete and specific legal obligation to provide it, is presently ready to furnish it, and makes it available as a practical, as well as formal, matter").

[243] *See, e.g.*, Ameritech Application at 19 (citing the Department of Justice SBC Oklahoma Evaluation); Brooks Fiber Comments at 2-4, 12; Time Warner Comments at 10; *see also* MFS WorldCom Reply Comments at 13 n.41 (contending that, if the Commission rejects MFS WorldCom's definition of "provide," the Commission should adopt the Department of Justice's proposal at a minimum).

[244] For instance, *The American Heritage College Dictionary* defines "provide" alternately as "[t]o furnish; supply" and "[t]o make available; afford." *The American Heritage College Dictionary* at 1102 (3d ed. 1993).

[245] *See* Department of Justice SBC Oklahoma Evaluation at 23.

[246] *See id.*; *see also* Brooks Fiber Comments at 3-4.

[247] *See* Department of Justice SBC Oklahoma Evaluation at 23; *see also* Brooks Fiber Comments at 2. We note that we are not at this time determining whether the agreements must contain prices adopted in permanent cost proceedings, as opposed to interim prices, in order to establish checklist compliance. The Department of Justice expressed concern that, at the time Ameritech filed its application, the prices in Michigan were for the

is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[248] For instance, the BOC may present operational evidence to demonstrate that the operations support systems functions the BOC provides to competing carriers will be able to handle reasonably foreseeable demand volumes for individual checklist items. As discussed below, such evidence may include carrier-to-carrier testing, independent third-party testing, and internal testing of operations suppport systems functions, where there is no actual commercial usage of a checklist item.[249]

111. Like the Department of Justice, we conclude that this interpretation of section 271(d)(3)(A)(i) "furthers the Congressional purpose of maximizing the options available to new entrants, without foreclosing BOC long distance entry simply because . . . [the BOC's] competitors choose not to use all of the options."[250] Requiring a BOC petitioning for entry under Track A actually to furnish each checklist item would make BOC entry contingent on competing LECs' decisions about when to purchase checklist items and would provide competing carriers with an opportunity to delay BOC entry.[251] We believe that such a result would be contrary to congressional intent.[252] We do not believe that competing LECs and interexchange carriers necessarily will purchase each checklist item in every state, as AT&T and MCI suggest.[253] Competitors may need different checklist items, depending upon their

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most part still interim and had not been finally determined to be cost-based. *See* Department of Justice Evaluation at 41-43. Numerous parties also raised this issue, urging the Commission not to rely on interim prices to establish checklist compliance. *See, e.g.,* ALTS Comments at 20-21; ALTS Reply Comments at 13-14; Brooks Fiber Comments at 10; CompTel Comments at 14-16; KMC Comments at 4-9; MCI Comments at 23-25; NCTA Reply Comments at 12-13; Sprint Reply Comments at 4; TRA Comments at 36. We need not resolve this issue in the context of the Ameritech application, because the Michigan PSC has approved final prices for Michigan, as stated above. *See supra* note 152. We note that a number of other states have issued orders adopting a cost methodology for permanent prices, and we expect additional states to issue similar decisions shortly.

[248] *See* Department of Justice SBC Oklahoma Evaluation at 23; *see also* Brooks Fiber Comments at 12; TRA Comments at 21 (stating that checklist items should be ubiquitously available in sufficient capacity with sufficient operational support).

[249] *See infra* para. 138.

[250] *See* Department of Justice SBC Oklahoma Evaluation at 22.

[251] *See, e.g.,* Ameritech Application at 18-19; Bell Atlantic Comments at 5-6; BellSouth/SBC Comments at 5-7.

[252] As stated above, the goal of the Act is to bring robust competition not only to the local market but to all telecommunications markets, and increasing competition in long distance through BOC entry serves this goal. Section 271 gives BOCs the power to determine when they will enter the long distance market, based on their efforts to open the local telecommunications market to competition. *See supra* Section II.B.

[253] *See* AT&T Reply Comments at 22-23; MCI Comments at 13.

individual entry strategies. The Act contemplates three methods of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale -- but does not express a preference for one particular strategy.[254] We thus believe that the reading of section 271(d)(3)(A)(i) proposed by the interexchange carriers is inconsistent with the statutory scheme, because it could create an incentive for potential local exchange competitors to refrain from purchasing network elements in order to delay BOC entry into the in-region, interLATA services market.

112. AT&T suggests that interpreting "provide" to mean "furnish" is not an unreasonably narrow reading of the statute, because BOCs have ultimate control over a competing LEC's decision to purchase a checklist item.[255] Contrary to AT&T's suggestion, however, a BOC cannot compel a competing LEC to contract to purchase a specific checklist item, absent an implementation schedule for the purchase of that item in the interconnection agreement between the BOC and competing LEC. AT&T asserts that a BOC has a legal remedy if competing LECs refuse to purchase a particular checklist item covered by their interconnection agreements with a BOC. AT&T states the remedy is the ability "to invoke the exceptions to Track A which trigger Track B."[256] We disagree, because the failure of a competing LEC to purchase a particular checklist item is not grounds for proceeding under Track B unless the competing carrier's failure amounts to a breach of the interconnection agreement. Once a BOC has received a qualifying request for access and interconnection, Track B is available, by its terms, only "if the provider or providers making such a request have (i) failed to negotiate in good faith . . . , or (ii) violated the terms of an [approved] agreement . . . by failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement."[257]

113. Several parties contend that operational implementation is necessary to expose the limitations and omissions in a BOC's offering of a network element.[258] They assert that interpreting "provide" to mean something less than "furnish" allows incumbent LECs to delay

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[254] *See Iowa Utils. Bd.*, 1997 WL 403401 at *27-28 (concluding that facilities-based competition is not the exclusive goal of the Act).

[255] AT&T Reply Comments at 22-24.

[256] *Id.* at 22-24.

[257] *See* 47 U.S.C. § 271(c)(1)(B); *SBC Oklahoma Order* at paras. 27-59.

[258] *E.g.*, CompTel Comments at 11-12; MCI Comments at 11-15 (asserting that Congress rejected reliance on regulatory judgments about what might or might not work if put into practice and decided to trust the market), and Exhibit G at 5; TRA Reply Comments at 7-8.

competitors' access to particular network elements and otherwise avoid checklist obligations.[259] Others maintain that competitors may not have requested a given checklist item because the BOC's offering is deficient, unusable, or unreasonably priced.[260] We emphasize that the Commission will examine the terms and conditions, as well as the prices, for the BOC's offering of individual checklist items, regardless of whether the BOC is actually furnishing the checklist items. With regard to each checklist item, the Commission must first determine whether the terms of the interconnection agreement establishing the BOC's obligation to provide a particular checklist item comply with the Act. In the case of checklist items that have not been furnished, the Commission must make a predictive judgment to determine whether a petitioning BOC could actually furnish the requested checklist item upon demand.[261] Although we recognize that such a judgment may be difficult to make, we believe that it is required by the terms of section 271 and is consistent with the statutory scheme that Congress envisioned. As we noted in the *SBC Oklahoma Order*, "the Commission is called upon in many contexts to make difficult determinations and has the statutory mandate to do so."[262]

114. Several parties claim that Congress's contrasting use of "provide" and "generally offer" throughout section 271 reflects the fundamental structural difference between entry under Track A and entry under Track B. They assert that the critical difference is that, under Track A, a BOC must actually be furnishing each of the elements in a timely and nondiscriminatory fashion; in contrast, under Track B, the BOC need not actually furnish an element that has not yet been requested, but must nonetheless prove that it could do so if asked.[263] Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements

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[259] *See, e.g.,* AT&T Reply Comments at 24; MCI Comments at 15-16 (suggesting that BOCs may delay competitors' access to particular network elements to prevent them from being in a position to purchase the element by an established date and alleging that Ameritech has delayed its competitors' access to unbundled local switching).

[260] *See, e.g.,* ALTS Comments at 14-15; AT&T Reply Comments at 22; CompTel Comments at 13; LCI Comments at 2-3; MFS WorldCom Comments at 12; *see also* MFS WorldCom Reply Comments at 10 (stating that withholding availability of a network element should not support checklist compliance).

[261] *See* AT&T Reply Comments at 24 (urging the Commission to examine implementation issues); TRA Reply Comments at 8.

[262] *SBC Oklahoma Order* at paras. 57-58 and n.181 (citing Supreme Court case law recognizing that the Commission may be required to make difficult predictive judgments in order to implement certain provisions of the Communications Act).

[263] *See* AT&T Reply Comments at 19-21; CompTel Comments at 11-12; LCI Comments at 1-2; MCI Comments at 12-13; MFS WorldCom Comments at 9-10; MFS WorldCom Reply Comments at 13. *But see* Bell Atlantic/NYNEX Reply Comments at 3-4 (contending that there is "no statutory link between the method for showing checklist compliance under paragraph [272](c)(2) and the track available under paragraph [272](c)(1)").

and the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of generally available terms and conditions. A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection available, reflecting the fact that no competing provider has made a qualifying request therefor. Because we conclude that Congress used the terms "provide" and "generally offer" to distinguish between two methods of entry, we believe that the contrasting use of "provide" and "generally offer" in section 271 does not require us to define "provide" to mean only "furnish."

115. Several parties cite legislative history to support their contention that Congress intended a BOC petitioning for interLATA entry under section 271(c)(1)(A) to be furnishing each checklist item.[264] In particular, they point to the Joint Explanatory Statement of the Conference Committee, which states that "[t]he requirement that the BOC 'is providing access and interconnection' means that the competitor has implemented the agreement and the competitor is operational."[265] We conclude that the requirement that a BOC petitioning for entry under Track A demonstrate the presence of a facilities-based competitor is consistent with congressional intent that a BOC face competition from an operational competitor before gaining entry into the in-region, interLATA services market. The fact that the legislative history refers to operational competition does not mean that a competitor of the BOC must actually be using every checklist item in order to be operational. Moreover, we conclude that a BOC may be found to have implemented an agreement without a competing LEC's having actually requested every item provided for therein. Given the varying needs of competing LECs, we believe that Congress did not intend to require a petitioning BOC to be actually furnishing each checklist item.

B. Checklist Items of Limited Dispute

116. As noted above, before discussing Ameritech's failure to comply with certain checklist items, we summarize here those checklist items for which there is very little comment in the record. Specifically, few parties raise issues regarding Ameritech's provision of: nondiscriminatory access to poles, ducts, conduits, and rights of way (section 271(c)(2)(B)(iii)), nondiscriminatory access to directory assistance and operator call completion services (section 271(c)(2)(B)(vii)(II) and (III)), white pages directory listings for competing LECs' customers (section 271(c)(2)(B)(viii)), nondiscriminatory access to telephone numbers (section 271(c)(2)(B)(ix)), nondiscriminatory access to databases and associated signaling necessary for call routing and completion (section 271(c)(2)(B)(x)), services or information necessary to allow a requesting carrier to implement local dialing parity (section

[264] *E.g.*, ALTS Comments at 13-14; AT&T Reply Comments at 19-21; MCI Comments at 13 n.17.

[265] Joint Explanatory Statement at 148.

271(c)(2)(B)(xii)) and reciprocal compensation arrangements (section 271(c)(2)(B)(xiii)).[266] We urge Ameritech to work with those few parties that raised concerns about these checklist items to resolve any remaining disputes prior to filing a new section 271 application. We are encouraged by the fact that at least one competing provider -- Brooks Fiber -- contends that Ameritech has met checklist items (iii), (viii), and (ix). In order to assist us in future proceedings, we urge commenters, including the relevant state commission and the Department of Justice, to analyze the applicant's compliance with each of the fourteen checklist items.

117. Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[267] Section 224(f)(1) of the Act imposes upon all utilities, including LECs, the duty to "provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it."[268] Ameritech states in its application that it provides nondiscriminatory access to poles, ducts, conduits and rights-of-way by three means: by providing access to its maps and records; by employing a nondiscriminatory methodology for assigning existing spare capacity between competing carriers; and by ensuring comparable treatment in completing the steps for access to these items through Ameritech's "Structure Access Coordinator."[269] Ameritech also asserts that it will comply with the applicable state requirements of any state, such as Michigan, that elects to regulate directly poles, ducts, conduits, and rights-of-way.[270]

118. The Michigan Commission finds, based on Ameritech's provision of this checklist item to Brooks Fiber, that it "appears Ameritech satisfies this checklist item."[271] The Department of Justice states that it does not have sufficient independent information to conclude whether Ameritech is presently in compliance with this checklist item.[272] In contrast, MCTA contends that Ameritech is not providing nondiscriminatory access to poles at

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[266] *See* 47 U.S.C. §§ 271(c)(2)(B)(iii), (vii), (viii), (ix), (x), (xii), (xiii).

[267] *Id.* § 271(C)(2)(B)(iii).

[268] *Id.* § 224(f)(1). We note that the *Local Competition Order* adopted rules on this requirement. *See Local Competition Order*, 11 FCC Rcd at 16058-74.

[269] Ameritech Application at 41.

[270] *Id.*

[271] Michigan Commission Consultation at 36.

[272] Department of Justice Evaluation at 9-10 n.16.

just and reasonable rates.[273] Similarly, AT&T asserts that Ameritech has no record of "proven compliance" with its obligation to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way, and in the absence of such a record, the Commission may find compliance with this checklist item only if there are adequate written procedures for access to poles, ducts, conduits, and rights-of-way in Michigan as well as enforceable provisioning intervals at just and reasonable rates.[274] Nonetheless, Brooks Fiber, the carrier to whom Ameritech is actually furnishing access to poles, ducts, conduits, and rights of way, states that Ameritech is in compliance with this checklist item.[275]

119. Section 271(c)(2)(B)(vii) requires BOCs to provide "[n]ondiscriminatory access to - . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."[276] With respect to its provision of directory assistance and operator services, Ameritech asserts that it furnishes directory assistance services to Brooks Fiber, MFS WorldCom, and MCI, and operator services to Brooks Fiber.[277] Ameritech maintains that it has established procedures to ensure that these services are provided at parity with the service that Ameritech provides to itself.[278] The Michigan Commission finds that "Ameritech appears to comply with the directory assistance and operator call completion requirements of the checklist."[279] The Department of Justice did not evaluate Ameritech's showing on these checklist items. Several commenters object to Ameritech's failure to provide the "customized routing" capability of its local switch that allows directory assistance and operator services to be routed to the directory assistance and operator services platform of the requesting carrier. We address that issue in our discussion below regarding unbundled local switching.[280]

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[273] MCTA Comments at 12-13.

[274] AT&T Comments, Vol. XI, Tab N, Lester Aff. at 7-11.

[275] Letter from John C. Shapleigh, Executive Vice President, Brooks Fiber, to William F. Caton, Acting Secretary, Federal Communications Commission at Attachment A (Aug. 4, 1997) (Brooks Fiber *Ex Parte*); Ameritech Application, Vol. 2.3, Edwards Aff. at 40.

[276] 47 U.S.C. § 271(c)(2)(B)(vii). We note that the Commission adopted rules regarding directory assistance and operator services. *See Local Competition Order*, 11 FCC Rcd at 15768-74 and Appendix B; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19447-64 and Appendix B.

[277] Ameritech Application at 47.

[278] *Id.* at 48.

[279] Michigan Commission Consultation at 45.

[280] *See infra* para. 331.

120. In addition to that concern, MCI asserts that Ameritech will only provide unbundled access to its directory assistance database through the bona fide request process, and that this adds unnecessary expense and delay. Instead, MCI contends, access to directory assistance databases should be provided through established procedures on a predictable basis.[281] In response, Ameritech maintains that a bona fide request process is necessary because Ameritech has no idea what specific type of electronic access a carrier wants to access Ameritech's directory assistance services until it receives an order for such access.[282] Ameritech states further that this type of request is one that is best defined, designed, and priced through the bona fide request process.[283] Consequently, Ameritech asserts, it would make no sense to design a standard product.[284] The record contains no comments with respect to Ameritech's provision of operator services.

121. Section 271(c)(2)(B)(viii) requires BOCs to provide "white pages directory listings for customers of the other carrier's telephone exchange service."[285] Ameritech asserts that it satisfies this requirement by ensuring that its directory publishing affiliate will: publish the listings of competing LECs in the same geographic scope at no charge; provide initial and secondary delivery of white page directories to customers of resellers on the same basis as its own customers; license its white pages listing on a current basis to competing carries for use in publishing their own directories; and provide access to its directory listings in readily accessible magnetic tape or electronic format for the purpose of providing directory assistance.[286] The Michigan Commission finds that it "appears that Ameritech meets this checklist item."[287] The Department of Justice did not evaluate Ameritech's showing on this checklist item. No commenters, with the exception of Brooks Fiber, addressed Ameritech's compliance with this checklist item in the instant proceeding. Brooks Fiber asserts that Ameritech complies with this checklist requirement.[288]

122. Section 271(c)(2)(B)(ix) provides that "[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established, [a

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[281] MCI Comments, Exh. G, Sanborn Aff. at 15-16.

[282] Ameritech Reply Comments, Vol. 5R.6, Edwards Reply Aff. at 42.

[283] *Id.*

[284] *Id.*

[285] 47 U.S.C. § 271(c)(2)(B)(viii).

[286] Ameritech Application, Vol. 2.3, Edwards Aff. at 63.

[287] Michigan Commission Consultation at 46.

[288] Brooks Fiber *Ex Parte* at Attachment A.

BOC must provide] nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers." After that date, this section further provides, a BOC must comply with such guidelines, plan, or rules.[289] Ameritech states that in its capacity as Central Office Code Administrator in Michigan, it furnishes nondiscriminatory access to telephone numbers for assignment to the networks of competing carriers, in accordance with the Central Office Code Assignment Guidelines and the NPA Code Relief Planning Guidelines, under the oversight and complaint jurisdiction of the Commission. Ameritech states that it has furnished, and continues to furnish, telephone numbers to Brooks Fiber, MFS WorldCom and TCG.[290] In addition, Ameritech maintains it has assigned 150 NXX codes to new local exchange providers including Brooks Fiber, MFS WorldCom, TCG, MCI, and Phone Michigan.[291] The Michigan Commission contends that Ameritech "has responded to requests for numbers in each area code and has the capability to meet the demand when asked by known providers." The Michigan Commission concludes that "[i]t therefore continues to appear that Ameritech has met this checklist item."[292] Brooks Fiber also maintains that Ameritech satisfies the requirements of this checklist item.[293] The Department of Justice did not evaluate Ameritech's showing on this checklist item. Phone Michigan, however, asserts that "Ameritech delayed Phone Michigan's entry in the Saginaw, Bay City, and Midland exchanges by several months by refusing to assign . . . NXX's for its collocation site" at Ameritech's Saginaw tandem switch.[294]

123. Section 271(c)(2)(B)(x) requires the BOC to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."[295] Ameritech asserts that it provides unbundled nondiscriminatory access to its signaling networks, its call-related databases used in its signaling networks for billing and collection or the transmission, routing or other provision of telecommunications service, and to its Service Management System (SMS).[296] Ameritech maintains that it is currently furnishing access to call-related databases and signaling to several carriers, including Brooks Fiber, MFS

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[289] 47 U.S.C. § 271(c)(2)(B)(ix).

[290] Ameritech Application at 49.

[291] Ameritech Application, Vol. 2.3, Edwards Aff. at 66.

[292] Michigan Commission Consultation at 47.

[293] Brooks Fiber *Ex Parte* at Attachment A.

[294] Phone Michigan Comments at 5.

[295] 47 U.S.C. § 271(c)(2)(B)(x). We note that the *Local Competition Order* adopted rules on databases and signaling systems. *See Local Competition Order*, 11 FCC Rcd at 15722-51 and Appendix B.

[296] Ameritech Application, Vol. 2.3, Edwards Aff. at 70.

WorldCom, and TCG. Each of its call-related databases, according to Ameritech, is accessed in the same manner and via the same signaling links that are used by Ameritech itself.[297] The Michigan Commission finds that Ameritech "appears to comply with this checklist item."[298] The Department of Justice did not evaluate Ameritech's showing on this checklist item. According to Brooks Fiber, it has experienced recent problems in coordinating the provision of Ameritech's signaling network that have caused serious service interruptions for customers of Brooks Fiber. For example, Brooks Fiber asserts that, on one occasion, more than 14,000 telephone calls were blocked.[299] MCI questions whether competing LECs "could get access to Ameritech's Advanced Intelligent Network databases today, much less create programs via Ameritech's Service Creation Environment/SMS."[300]

124. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[301] Section 251(b)(3), in turn, imposes on all LECs the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[302] Ameritech maintains that it meets these requirements, and that local dialing parity is currently being furnished in 100 percent of Ameritech's switches and access lines.[303] The Michigan Commission finds that "it appears that Ameritech complies with this checklist item."[304] The Department of Justice did not evaluate Ameritech's showing on this checklist item. Although a number of commenters find fault with Ameritech's provision of intraLATA toll dialing parity in Michigan,[305] only MCI addresses Ameritech's provision of local dialing parity. MCI asserts that, because Ameritech

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[297] *Id.*

[298] Michigan Commission Consultation at 48.

[299] Brooks Fiber Comments at 32.

[300] MCI Comments, Exh. G, Sanborn Aff. at 37.

[301] 47 U.S.C. § 271(c)(2)(B)(xii).

[302] *Id.* § 251(b)(3). We note that the Commission adopted rules regarding this requirement. *See Local Competition Second Report and Order*, 11 FCC Rcd at 19405-64 and Appendix B.

[303] Ameritech Application, Vol. 2.8, Mayer Aff. at 121-24.

[304] Michigan Commission Consultation at 51.

[305] *See infra* Section VIII.B.

does not provide unbundled directory assistance databases on an equal-in-quality basis, it is not in compliance with the checklist requirement of dialing parity.[306]

125. Section 271(c)(2)(B)(xiii) requires a BOC to provide "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[307] Ameritech asserts that it currently furnishes reciprocal compensation for the exchange of local traffic to Brooks Fiber, MFS, and TCG under their respective interconnection agreements. Ameritech explains that it provides reciprocal compensation rates for both tandem office-based and end office-based transport and termination of local traffic originating on the other carriers' network.[308] Despite the existence of a formal complaint against Ameritech presently pending before the Michigan Commission filed by Brooks Fiber regarding Ameritech's compliance with its reciprocal compensation obligations,[309] the Michigan Commission states that it "continues to believe that Ameritech complies with the checklist item."[310] The Department of Justice did not evaluate Ameritech's showing on this checklist item.

126. Parties have raised two areas of factual dispute regarding Ameritech's compliance with this obligation. First, TCG and Brooks Fiber claim that they have not been paid funds due to them under the reciprocal compensation provisions of their interconnection agreements with Ameritech.[311] Second, MCI claims that the Michigan Commission failed to take into account the fact that MCI's switches perform essentially the same functions as Ameritech's tandem switches, therefore entitling MCI to Ameritech's tandem termination rate rather than Ameritech's end office termination rate when MCI terminates Ameritech traffic.[312] Although Ameritech admits on reply that it has not paid TCG and Brooks Fiber for certain

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[306] MCI Comments, Exh. G, Sanborn Aff. at 37.

[307] 47 U.S.C. § 271(c)(2)(B)(xiii). Section 252(d)(2) provides that "[f]or the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. " 47 U.S.C. § 252(d)(2).

[308] Ameritech Application, Vol 2.3, Edwards Aff. at 78.

[309] This complaint, filed on April 23, 1997, pertains to whether Ameritech is obligated to provide reciprocal compensation for certain types of cellular and paging calls classified as "Type 2" calls. *See* Michigan Commission Consultation at 52.

[310] *Id.* at 53.

[311] TCG Comments at 17-18; Brooks Fiber Comments at 34-35.

[312] MCI Comments at 32.

reciprocal compensation bills, it claims that it has not done so because these bills contain obvious errors and are presently in dispute.[313] In response to MCI's claims, Ameritech argues that the Michigan Commission twice found against MCI on the subject of tandem interconnection rates, and that MCI is merely attempting to relitigate this issue in the instant proceeding.[314]

127. Finally, we note that, in light of our findings with respect to Ameritech's failure to satisfy other checklist requirements as discussed below, we are not required to make, and we do not make, any findings or conclusions with respect to Ameritech's compliance with the foregoing checklist items. We recognize, however, the considerable steps that Ameritech has taken in many of these areas, and we urge Ameritech and the other parties to continue to resolve any remaining disputes.

C. Operations Support Systems

1. Summary

128. As discussed below, we conclude that Ameritech has failed to demonstrate that it provides nondiscriminatory access to all of the operations support systems (OSS) functions provided to competing carriers, as required by the competitive checklist. First, we outline our general approach to analyzing the adequacy of a BOC's operations support systems. Second, we briefly describe the evidence in the record on this issue. Third, we analyze Ameritech's provision of access to OSS functions. We emphasize our expectation that Ameritech or any other BOC applicant must adequately document in any future section 271 application that it is able to provide OSS functions to support the provision of network elements, including combinations of network elements. We conclude that Ameritech has not demonstrated that the access to OSS functions that it provides to competing carriers for the ordering and provisioning of resale services is equivalent to the access it provides to itself. Because Ameritech fails to meet this fundamental obligation, we need not decide, in the context of this application, whether Ameritech separately complies with its duty to provide nondiscriminatory access to each and every OSS function. Therefore, although we do not address every OSS-related issue raised in the context of this application, we wish to make clear that we have not affirmatively concluded that those OSS functions not addressed in this decision are in compliance with the requirements of section 271. Fourth, we conclude that Ameritech has failed to provide us with empirical data necessary for us to analyze whether Ameritech is providing nondiscriminatory access to all OSS functions, as required by the Act. Finally, we conclude by highlighting a number of other OSS-related issues that we do not reach as a

[313] Ameritech Reply Comments, Vol. 5R.26, Springsteen Reply Aff. at 2-3.

[314] *Id.*, Vol. 5R.6, Edwards Reply Aff. at 52.

decisional basis, but which we raise as concerns in order to provide guidance for any future Ameritech applications.

2. Background

129. In order to compete in the local exchange market, new entrants must be able to provide service at a price and quality level that is attractive to potential customers. Incumbent LECs use a variety of systems, databases, and personnel to ensure that they provide telecommunications services to their customers at a certain level of quality, timeliness and accuracy. New entrants that use resale services or unbundled network elements obtained from the incumbent LEC depend heavily on the incumbent LEC to be able to provide a competitive level of service. In particular, new entrants must have access to the functions performed by the systems, databases and personnel, commonly referred to collectively as operations support systems,[315] that are used by the incumbent LEC to support telecommunications services and network elements.[316]

130. Indeed, in the *Local Competition Order*, the Commission concluded that operations support systems and the information they contain are critical to the ability of competing carriers to use network elements and resale services to compete with incumbent LECs.[317] The Commission determined that providing access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory, just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.[318] The Commission concluded that, in order to meet the nondiscriminatory standard for OSS, an incumbent LEC must provide to competing carriers access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is equivalent to what it provides itself, its customers

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[315] We note that the Department of Justice, in its evaluation, uses the term "wholesale support processes," which it defines as "the automated and manual processes required to make resale services and unbundled elements, among other items, meaningfully available to competitors." Department of Justice Evaluation, Appendix A at 1. We believe the terms "operations support systems," as used by the Commission, and "wholesale support processes," as used by the Department of Justice, are the same.

[316] *See Local Competition Order*, 11 FCC Rcd at 15763.

[317] *Id.* As noted in that order, Ameritech itself recognized that "[o]perational interfaces are essential to promote viable competitive entry." *Id.* (quoting Letter from Antoinette Cook Bush, Counsel, Ameritech, to William Caton, Acting Secretary, Federal Communications Commission (July 10, 1996)).

[318] *Local Competition Order*, 11 FCC Rcd at 15660-61, 15763; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742-43. We note that the Court of Appeals for the Eighth Circuit has affirmed our determination that operations support systems qualify as network elements that are subject to the unbundling requirements of section 251(c)(3) of the Act. *See Iowa Utils. Bd.*, 1997 WL 403401, at *19.

or other carriers.[319] Additionally, the Commission concluded that incumbent LECs must generally provide network elements, including OSS functions, on terms and conditions that "provide an efficient competitor with a meaningful opportunity to compete."[320]

131. Section 271 requires the Commission to determine whether a BOC has satisfied its duty under section 251 to provide nondiscriminatory access to OSS functions. First, sections 271(c)(2)(B)(ii) and (xiv) expressly require a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" and to demonstrate that "telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[321] Because the duty to provide access to network elements under section 251(c)(3) and the duty to provide resale services under section 251(c)(4) include the duty to provide nondiscriminatory access to OSS functions, an examination of a BOC's OSS performance is necessary to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).

132. Second, the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well. As discussed above, the duty to "provide" items under the checklist requires a BOC to furnish the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, to make the item available as both a legal and practical matter.[322] In the *Local Competition Order*, the Commission concluded that providing nondiscriminatory access to OSS functions was a "'term or condition' of unbundling other network elements under section 251(c)(3), or resale under section 251(c)(4)."[323] In order for a BOC to be able to demonstrate that it is providing the items enumerated in the checklist (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate, *inter alia*, that it is providing nondiscriminatory access to the systems, information, and personnel that support those elements or services. Therefore, an examination of a BOC's OSS performance is integral to our determination whether a BOC is "providing" all of the items contained in the competitive checklist. Without equivalent access to the BOC's operations support systems, many items

[319] *Local Competition Order*, 11 FCC Rcd at 15766; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742-43. *See* 47 C.F.R. § 51.5 for definitions of the five functions.

[320] *Local Competition Order*, 11 FCC Rcd at 15660.

[321] 47 U.S.C. §§ 271(c)(2)(B)(ii), (xiv).

[322] For a discussion of the meaning of "provide," see *supra* Section VI.A.

[323] *Local Competition Order*, 11 FCC Rcd at 15763.

required by the checklist, such as resale services, unbundled loops, unbundled local switching, and unbundled local transport, would not be practically available.[324]

3. General Approach to Analyzing Adequacy of OSS

133. In determining whether a BOC has met its OSS obligation under section 271, the Commission generally must determine whether the access to OSS functions provided by the BOC to competing carriers sufficiently supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale. In so doing, we seek to ensure that a new entrant's decision to enter the local exchange market in a particular state is based on the new entrant's business considerations, rather than the availability or unavailability of particular OSS functions to support each of the modes of entry. Currently, competitive carriers in Michigan are pursuing a mix of entry strategies, including the use of resale services, unbundled network elements, and facilities they have installed themselves. The OSS functionalities to which Ameritech provides access, as part of its OSS obligations, must support each of the three modes of entry and must not favor one strategy over another.

134. In assessing a BOC's operations support systems, we conclude that it is necessary to consider all of the automated and manual processes a BOC has undertaken to provide access to OSS functions to determine whether the BOC is meeting its duty to provide nondiscriminatory access to competing carriers. A BOC's provision of access to OSS functions necessarily includes several components, beginning with a point of interface (or "gateway")[325] for the competing carrier's own internal operations support systems to interconnect with the BOC; any electronic or manual processing link between that interface and the BOC's internal operations support systems (including all necessary back office systems and personnel); and all of the internal operations support systems (or "legacy systems") that a BOC uses in providing network elements and resale services to a competing carrier.

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[324] In the *Local Competition Order*, the Commission noted that "[w]e believe. . .that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities." *Local Competition Order*, 11 FCC Rcd at 15763.

[325] *See id.* at 15766-67. Nondiscriminatory access "necessarily includes access to the *functionality* of any internal gateway systems the incumbent employs in performing OSS functions for its own customers." *Id.* (emphasis added).

135. In contrast to our approach, Ameritech appears to claim that its duty to provide nondiscriminatory access to OSS functions extends only to the interface component.[326] We conclude that Ameritech's interpretation of our rules is incorrect. The Commission's rules clearly require that an incumbent LEC's duty to provide nondiscriminatory access extends beyond the interface component.[327] It is the access to all of the processes, including those existing legacy systems used by the incumbent LEC to provide access to OSS functions to competing carriers, that is fundamental to the requirement of nondiscriminatory access.[328] For example, although the Commission has not required that incumbent LECs follow a prescribed approach in providing access to OSS functions, we would not deem an incumbent LEC to be providing nondiscriminatory access if limits on the processing of information between the interface and the legacy systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.[329] Accordingly, we conclude that our rules require that we review all of the processes used by the BOC to provide access to OSS functions.

136. In making this evaluation, we generally agree with the Department of Justice and the Michigan Commission that we must make a two-part inquiry.[330] First, the Commission must determine whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them. Second, the Commission must determine whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.[331]

137. Under the first part of this inquiry, a BOC must demonstrate that it has developed sufficient electronic and manual interfaces to allow competing carriers to access all

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[326] *See, e.g.*, Ameritech Application, Vol. 2.13, Rogers Aff. at 23; Ameritech Reply Comments, Vol. 5R.24, Rogers Reply Aff. at 11.

[327] This obligation extends only to those existing legacy systems used by the incumbent LEC to provide the necessary access to OSS functions to competing carriers. *See Local Competition Order*, 11 FCC Rcd at 15763 (recognizing that "the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry"); 47 C.F.R. § 51.319(f)(1) ("operations support systems functions consist of . . . functions supported by an incumbent LEC's *databases and information*") (emphasis added).

[328] *See Local Competition Second Reconsideration Order*, 11 FCC Rcd at 15742-43.

[329] *See Local Competition Order*, 11 FCC Rcd at 15763-64.

[330] Department of Justice Evaluation, Appendix A at 1; Michigan Commission Consultation at 33.

[331] Department of Justice Evaluation, Appendix A at 1; Michigan Commission Consultation at 33; *see also* Ameritech Application, Vol. 2.13, Rogers Aff. at 10.

of the necessary OSS functions. For those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers.[332] We recognize, however, that for some functions, manual access may need to remain available as an additional mode of access.[333] A BOC also is obligated to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the BOC's legacy systems and any interfaces utilized by the BOC for such access.[334] The BOC must provide competing carriers with all of the information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into the legacy systems as quickly and efficiently as possible. In addition, the BOC must disclose to competing carriers any internal "business rules,"[335] including information concerning the ordering codes[336] that a BOC uses that competing carriers need to place orders through the system efficiently.[337] Finally, the BOC must ensure that its operations support systems are

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[332] *See Local Competition Order*, 11 FCC Rcd at 15767 ("[A]n incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering."); *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19739.

[333] For example, there may be a number of smaller competing carriers that prefer to fax or phone in their orders because the number of customers they serve would not support the amount of investment required to build a form of electronic access.

[334] As the Commission noted in the *Local Competition Second Reconsideration Order*, "[i]nformation regarding interface design specifications is critical to enable competing carriers to modify their existing systems and procedures or develop new systems to use these interfaces to obtain access to the incumbent LEC's OSS functions. For example, if an incumbent LEC adopted the Electronic Data Interchange (EDI) standard to provide access to some or all of its OSS functions, it would need to provide sufficiently detailed information regarding its use of this standard so that requesting carriers would be able to develop and maintain their own systems and procedures to make effective use of this standard." *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742.

[335] Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders. "Business rules define valid relationships in the creation and processing of orders, as well as numerous other interactions." For example, Ameritech's systems are programmed not to allow orders previously rejected by Ameritech's systems to be corrected and resubmitted using the same order number. Instead, Ameritech requires each order, whether new or resubmitted, to have its own unique order number. AT&T Comments, Vol. III.F, Connolly Aff. at 21.

[336] Such ordering codes include universal service ordering codes ("USOCs") and field identifiers ("FIDs"). These codes are used by local carriers to identify the different services and features used in offering telecommunications services to customers. *See* Department of Justice Evaluation, Appendix A at 24.

[337] As AT&T argues, we do not believe that a BOC's disclosure of business rules necessary for seamless access to OSS functions will require it to divulge confidential or competitively sensitive information. *See* AT&T Comments, Vol. III.E, Bryant Aff. at 12-13. Moreover, to the extent that certain business rules may constitute confidential or sensitive information and, at the same time, be necessary to provide seamless access to OSS